

**STATEMENT OF COLLEEN M. KELLEY
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before the

**COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
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Good morning Chairman Davis, Ranking Member Waxman and members of the Committee on Government Reform. My name is Colleen M. Kelley and I am the National President of the National Treasury Employees Union (NTEU). NTEU represents 150,000 federal workers in 29 agencies. I appreciate the opportunity to appear before the Committee today.

The issue for today's hearing is what authority the President should have to reorganize the federal government. The Courts have ruled unconstitutional previous means of Presidential reorganization authority. This section of Title V, (5 U.S.C. Chapter 9) allowed the President to eliminate, consolidate, transfer, and rename executive agencies, working outside the legislative process, limited only by a one house Congressional veto. Congress had no power to amend, alter or modify a reorganization plan, only approve or disapprove it. In 1983 the Supreme Court found such one-house veto provisions unconstitutional.

The question here does go to the fundamental basis of our government. The founding fathers of our nation developed a Constitution with careful checks and balances among the powers and authorities of the various branches of government. This is the most remarkable and profound aspect of our American constitutional system. It is something not to be lightly changed or put out of balance. The President, as chief executive, has wide and broad authority over the Executive Branch of government. He appoints key personnel, only a minority

and at the highest levels, requiring Senate confirmation. He directs the policy and functions of Executive Branch agencies. By Executive Order he can direct interagency collaboration and set certain personnel policies.

Yet even with this broad authority, the President does not have unilateral and unrestrained authority over the Executive Branch. Our American system of checks and balances exists to restrain one branch from seeking to centralize power at the expense of the others. With each branch dependent on the other in various ways, this system encourages cooperation and accommodation, frequently by negotiation, bargaining and compromise.

Congressional action is required to create Executive Branch departments, to fund them, to determine the nature and scope of their duties and to confirm the appointment of their top leaders. One would hope that Congress would not lightly give away these rightful prerogatives. But Constitutional scholars have noted that at times Congress has unconstitutionally evaded its responsibility for hard decisions by creating complicated schemes for shifting visible responsibility away from itself.

Fast track style schemes, while still leaving a difficult but not non-existent means of Congressional veto, eliminate all opportunities for meaningful dialogue and review by Congress. Moreover, it is the legislative process, particularly Congressional hearings, where the public is able to comment on the structure and function of their government. Mr. Chairman, I assume that you have called me and the other witness here this morning because you and your colleagues see Congressional hearings and the questioning of witnesses (including Administration witnesses) as something worthwhile and helpful to good government. Reorganization plans presented to Congress fully developed and unamendable leave no room for input from the general public. Many parties are affected by reorganizations: agency managers, employees, customers of the agency, entities regulated by the agency, etc. None of these has the right to

expect their own particular interest should obstruct a wise and needed reorganization, but none of these communities should be denied the opportunity to have their legitimate input into the dialogue and discussion that develops such a proposal. Allowing the President to ram through reorganization plans without providing a fair opportunity for all the issues to be fully aired does an injustice to the American public. The most well-known use of fast track authority is with foreign trade deals. There the argument is the President is negotiating with another government and cannot have the agreement amended. In an Executive Branch reorganization, the President is not negotiating with anyone before he sends his proposal to Congress. It is his unilateral initiative.

The Volker Commission suggested that the President have the initiating role in government reorganization. I would not argue with that. But fast track authority goes far beyond an initiating role for the President. It eliminates any thoughtful consideration or debate by Congress.

My own union's recent experience with the Homeland Security legislation confirms my opposition to this proposal. There were important and positive changes made to the Homeland Security legislation as it moved through Congress, some authored by you, Mr. Chairman. Would the people really have been better served if a massive reorganization like Homeland Security was unamendable? The President's original proposal did not contain whistleblower protection for federal employees. It did not require merit principles. It did not ensure that non-Homeland defense functions of merged agencies would be maintained. While NTEU did not support all of the changes made to the legislation, it would be shocking if such a monumental reorganization would be unamendable, subject only to a single, up or down vote by each house of Congress.

I think the Homeland Security legislation is an example of Congress being able to produce change when it feels it is important. However, NTEU can

only oppose any legislation that would have prevented important employee rights such as Whistleblower protection, collective bargaining rights and employment based on merit rather than favoritism, from being added to the Homeland Security legislation or to any future reorganization proposal.

Some have proposed giving the President this authority as a way to achieve the spending cuts assigned to this Committee by the House passed Budget Resolution. That calls for \$1.1 billion in FY '04 and nearly \$40 billion over ten years to be cut from programs under this Committee's jurisdiction to pay for hundreds of millions of dollars in tax reductions for wealthy dividend holders and others. This is irresponsible government at its worst. Federal employees should not be made to sacrifice their health care or retirement security to finance tax cuts for the very wealthy. Nor should agency budgets, already cut to the bone, be used for this purpose either. Assigning this Committee such obligations can mean nothing other than the fact that federal workers will end up financing these tax giveaways to high income persons. This is wrong and NTEU strongly objects to it.

Chairman Davis, I always appreciate the opportunity to testify before you and would be happy to answer any questions you or other members of the Committee may have for me. Thank you.